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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ENRIQUE SANCHEZ-MARQUEZ, Defendant.	Criminal Case No. 07CR2971-H HEARING DATE: December 3, 2007 TIME: 2:00 p.m. UNITED STATES' MOTIONS FOR: (1) RECIPROCAL DISCOVERY; AND (2) FINGERPRINT EXEMPLARS. TOGETHER WITH MEMORANDUM OF POINTS AND AUTHORITIES

COMES NOW the plaintiff, the UNITED STATES OF AMERICA, by and through its counsel, CAROL C. LAM, United States Attorney, and Christopher M. Alexander, Assistant United States Attorney, and hereby files its Motions for Reciprocal Discovery and Fingerprint Exemplars. These Motions are based upon the files and records of the case together with the attached memorandum of points and authorities.

I

STATEMENT OF THE CASE

On September 29, 2007, a Indictment was returned in the Southern District of California charging Defendant Enrique Sanchez-Marquez ("Defendant") with being a deported alien found in the United States after deportation in violation of 8 U.S.C. § 1326. On November 2, 2007, the Court arraigned Defendant on the Indictment and entered a not guilty plea. The Court set a motion hearing date for December 3, 2007.

II

THE UNITED STATES' MOTION FOR RECIPROCAL DISCOVERY SHOULD BE GRANTED

On August 28, 2007, the United States provided 34 pages of discovery in a related case 07CR2471-H. As of this date, Defendant has produced no reciprocal discovery. The United States requests that Defendant comply with Rule 16(b) of the Federal Rules of Criminal Procedure, as well as Rule 26.2 which requires the production of prior statements of all witnesses, except for those of Defendant. Defendant has not provided the United States with any documents or statements. Accordingly, the United States will object at trial and ask this Court to suppress any evidence at trial which has not been provided to the United States.

III

THE UNITED STATES' MOTION FOR FINGERPRINT EXEMPLARS SHOULD BE GRANTED

Part of the United States' burden of proof in this case is to satisfy the jury that Defendant is an alien, who has previously been deported, and not received permission from the Attorney General to reenter. To make that showing, the United States will call an expert in fingerprint identification to match Defendant's fingerprints to relevant documents. The most efficient and conclusive manner of establishing this information is to permit the expert witness himself to take a set of Defendant's fingerprints for comparison.

Defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S. 757 (1966). Using identifying physical characteristics, such as fingerprints, does not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969); Woods v. United States, 397 F.2d 156 (9th Cir. 1968); see also United States v. St. Onge, 676 F. Supp. 1041, 1043 (D. Mont. 1987). The United States, therefore, requests that this Court order that Defendant make himself available for fingerprinting by the United States.

IV

CONCLUSION

For the foregoing reasons, the United States requests that the Court grant its motions for reciprocal discovery and fingerprint exemplars.

DATED: November 6, 2007

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/Christopher M. Alexander

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ENRIQUE SANCHEZ-MARQUEZ, Defendant.	Criminal Case No. 07CR2971-H **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED THAT:

I, CHRISTOPHER ALEXANDER, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of United States' Motions for (1) reciprocal discovery, and (2) fingerprint exemplars, together with memorandum of points and authorities on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Carey Gordon , Esq.
   Atty for Defendant Enrique Sanchez-Marquez
   Carey_Gordon@fd.org

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 6, 2007.

s/Christopher M. Alexander

CHRISTOPHER M. ALEXANDER